

Application No. 10/630,701

**IN THE DRAWINGS:**

Enclosed is a new formal drawing of Fig. 4, accompanied by a LETTER TO THE OFFICIAL DRAFTSPERSON. In Fig. 4, the second partitioning slat and the reference numeral "19" have been added.

## **REMARKS**

### **Claim Rejections**

Claim 1 is rejected under 35 U.S.C. §103(a) as being unpatentable over O'Connor (U.S. 1,523,136) in view of Guay et al. (U.S. 2003/01646645 A1). Claim 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over O'Connor and Guay et al. as applied to claim 1 and further in view of Swingley, Jr.

### **Amendments to Specification**

Applicant has amended the Specification as noted above to provide proper antecedent basis in the specification for the second partitioning slat and the reference numeral "19". It is believed that the foregoing amendments to the Specification overcome the outstanding objections thereto. No "new matter" has been added to the original disclosure by the foregoing amendments to the Specification.

### **Drawings**

Applicant has amended Fig. 4, as illustrated on the attached formal drawing, accompanied by a LETTER TO THE OFFICIAL DRAFTSPERSON. Figure 4 was amended to add the second partitioning slat and the reference numeral "19". No "new matter" has been added to the original disclosure by the amendments to these figures. It is believed the foregoing proposed amendments obviate the outstanding objections to the drawings. Entry of the corrected drawing is respectfully requested.

### **New Claims**

By this Amendment, Applicant has canceled claims 1-2 and has added new claims 3-4 to this application. It is believed that the new claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The new claims are directed toward a receptacle partition structure comprising: a receptacle (12) being a rectangular body having a rectangular interior and an upper opening; a pair of first assembling bodies (14), each of the pair of first assembling bodies being a slat body and having: two holes (42), one of the two holes is located at each of two opposing ends of each of the pair of first assembling bodies; and at least one first insertion slit (44) located in a middle section thereof; a pair of second assembling bodies (16), each of the pair of second assembling bodies being a slat body and having two bending sections (62), one of the two bending sections is located at each of two opposing ends of each of the pair of second assembling bodies, one of the two bending sections of each of the pair of second assembling bodies is inserted into each of the two holes of each of the pair of first assembling bodies, the pair of first assembling bodies and the pair of second assembling bodies are alternatingly positioned in the rectangular interior of the receptacle; and a first partitioning slat (18) having two ends, one of the two ends is inserted into one of the at least one first insertion slit of each of the pair of first assembling bodies.

Other embodiments of the present invention include: a second partitioning slat (19) having two ends, the first partitioning slat having at least one split (82) located on a middle section and having an open end, each of the pair of second assembling bodies having at least one second insertion slit (64) located in a middle section thereof, one of the two ends of the second partitioning slat is inserted into one at least one second insertion slit of each of the pair of second assembling bodies, and a middle portion of the second partitioning slat is inserted into the at least one split of the first partitioning slat.

The primary reference to O'Conner teaches a tray body (1) having two side strips (2) having slots (7) and a divider (8) with two flanges, one of the two flanges is inserted into one of the slots of each of the two side strips.

O'Conner does not teach each of the pair of first assembling bodies having two holes; one of the two holes is located at each of two opposing ends of each of the pair of first assembling bodies; one of the two bending sections of each of the pair of second assembling bodies is inserted into each of the two holes of each of the pair of first assembling bodies; nor does O'Conner teach the pair of first

assembling bodies and the pair of second assembling bodies are alternatingly positioned in the rectangular interior of the receptacle.

The secondary reference to Guay et al. teaches a drawer (2) having four walls (4), each of the four wall has an interlocking strip connected thereto, and a partition (8) having ends inserted into a slot of an interlocking strip of two opposing walls of the four walls.

Guay et al. do not teach each of the pair of first assembling bodies having two holes; one of the two holes is located at each of two opposing ends of each of the pair of first assembling bodies; one of the two bending sections of each of the pair of second assembling bodies is inserted into each of the two holes of each of the pair of first assembling bodies; nor do Guay et al. teach the pair of first assembling bodies and the pair of second assembling bodies are alternatingly positioned in the rectangular interior of the receptacle.

The secondary reference to Swingley, Jr. teaches a box (10) having four walls, each having slots (80), and divider plates (62, 66), each having tabs (74) inserted into the slots.

Swingley, Jr. does not teach each of the pair of first assembling bodies having two holes; one of the two holes is located at each of two opposing ends of each of the pair of first assembling bodies; one of the two bending sections of each of the pair of second assembling bodies is inserted into each of the two holes of each of the pair of first assembling bodies; nor does Swingley, Jr. teach the pair of first assembling bodies and the pair of second assembling bodies are alternatingly positioned in the rectangular interior of the receptacle.

Even if the teachings of O'Conner, Guay et al., and Swingley, Jr. were combined, as suggested by the Examiner, the resultant combination does not suggest: each of the pair of first assembling bodies having two holes; one of the two holes is located at each of two opposing ends of each of the pair of first assembling bodies; one of the two bending sections of each of the pair of second assembling bodies is inserted into each of the two holes of each of the pair of first assembling bodies; nor does the combination suggest the pair of first assembling bodies and the pair of second assembling bodies are alternatingly positioned in the rectangular interior of the receptacle.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when

resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either O'Conner, Guay et al., or Swingley, Jr. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither O'Conner, Guay et al., nor Swingley, Jr. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's new claims.

Application No. 10/630,701

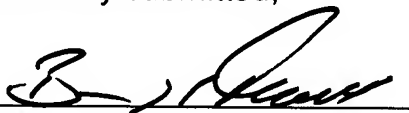
**Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

Date: May 30, 2006

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**CUSTOMER NUMBER: 40144**